IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1420 of 1986

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAINA J SHAH

Versus

ARVINDLAL CHUNILAL

Appearance:

MR KAPADIA for MR SB VAKIL for Petitioners

MR SN SHELAT for Respondents

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22-23/02/2001

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 by the heirs of the original defendant-tenant, who was sued by the respondents plaintiffs-landlords for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord sued the tenant for a decree of eviction on three grounds. Firstly, it was contended that the tenant was in arrears of rent of more than six months and inspite of the statutory notice, had not complied with the same and was therefore deemed to be not ready and willing to pay the same. The second ground for eviction was that the original-landlord reasonably and bonafide required the suit premises for his personal use and occupation for the purpose of expansion of his existing business and that greater hardship would be caused to the landlord by refusing the decree of eviction than to the tenant if the decree was granted, and that therefore the landlord was entitled to decree under section 13(1)(g) of the Bombay Rent Act.

3. The landlord also contended that the tenant was liable to be evicted under the provisions of section 13(1)(e) of the Bombay Rent Act inasmuch as he has unlawfully sublet and/or assigned and/or transferred his interest in the suit premises to other parties.

4. The trial court, after appreciation of the evidence on record, dismissed the landlord's suit on the ground of arrears by recording a finding that the defendant was ready and willing to pay the rent inasmuch as the appropriate amount covering the arrears as claimed in the suit notice had been deposited in the court.

5. The trial court, however, passed a decree in favour of the landlord for eviction of the defendant-tenant on the ground that he reasonably and bonafide required the suit premises for his personal use and occupation, for the purpose of expansion of his existing business, and also found that the tenant had unlawfully sub-let the said premises and had also transferred his interest in the suit premises to third parties, and therefore passed a decree of eviction on the aforesaid two grounds.

6. It may be noted here that the defendant-tenant had raised a dispute as to standard rent as regards the contractual rent which was Rs.50/- per month, and the trial court found that the tenant had failed to establish that the contractual rent of Rs.50/- per month was in any way excessive and therefore confirmed the same as standard rent, and also allowed one half of the education cess payable by the landlord to the local authority, as being an amount allowable under the law.

7. The tenant being aggrieved by the decree of

eviction, preferred an appeal under section 29(1) of the Bombay Rent Act. The lower appellate court noted that so far as the dismissal of the plaintiff's suit on the ground of arrears is concerned, the plaintiff-landlord had not filed any cross-objections in the appeal, nor had raised any contention during the course of hearing of the appeal, and therefore the said question was not required to be discussed by the lower appellate court.

8. The lower appellate court, however, on a total reappreciation of the evidence on record, upset the finding, the appreciation of evidence, and the decree passed by the trial court on the ground of reasonable and bonafide requirement of the landlord under section 13(1)(g) of the Bombay Rent Act. The lower appellate court found that the landlord had failed to establish that he reasonably and bonafide required the suit premises for the expansion of his existing business, and also recorded a finding that passing decree for eviction under section 13(1)(g) of the said Act would result in greater hardship to the tenant than the hardship suffered by the landlord in case the decree were refused.

9. However, the lower appellate court upheld the findings of fact recorded by the trial court, and confirmed the decree of eviction against the tenant on the ground of unlawful subletting under section 13(1)(e) of the said Act, by finding that the tenant had unlawfully sublet the premises to others and had transferred his interest in the tenancy to such parties.

10. It is under these circumstances that the tenants have preferred the present revision under section 29(2) of the Bombay Rent Act.

11. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of

no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

12. The only point therefore which requires to be considered in the present revision is as to whether the lower appellate court was justified in confirming the finding of the trial court that the tenant had unlawfully sublet the suit premises and transferred his interest in the premises to others.

13. On a total reappreciation of the evidence (though the same is not justified in the present revision under section 29(2) of the Bombay Rent Act), I find that the findings of fact and law recorded by the lower appellate court are eminently sustainable and do not require any interference by way of the present revision.

14. It is admitted by the defendant-tenant in his oral deposition that when the premises were let out to him, they were let out to him in his personal capacity, and there was no partnership in existence at the relevant point of time. Even otherwise, no contrary case has been even attempted to be made out by the tenant.

15. It is also an admitted position that on the date of the suit notice the defendant was not in possession of the suit premises, that the possession as also the tenancy rights were vested in the partnership firm in which the defendant contended he was a partner. Exhs.61 and 62 are two successive partnership deeds in which the defendant claimed to have been a partner. It is clear from even a bare perusal of the partnership deed at Exh.62 that the tenancy rights have been transferred by the defendant-tenant. This is also admitted by the defendant in his deposition.

15. It is pertinent to note that the partnership was not registered.

16. It is equally clear and also admitted by the defendant as also the partners who have been examined on record, that the defendant had a 10% share in only the profits of the firm, and had no share in the losses at all.

16.1 Exh.62 being the partnership deed discloses (which is even otherwise admitted by the partners) that apart from the defendant, there are other partners who are the defendant's daughter and the defendant's

mother-in-law.

17. It is admitted in the oral evidence that the so-called partnership was formed because the defendant was getting old and unable to perform the work of a plumber. It is not anybody's case, and certainly not the case of the defendant, that he was performing any managerial or other executive functions in the partnership, or contributing in any other way to the functioning of the partnership.

17.1 The defendant-tenant, apart from the fact that he is not liable for any loss suffered by the firm, is also not liable to contribute to any expenses of the firm (such as Income Tax, Municipal Tax, Sales Tax etc.) which may have to be paid by the firm. Thus his share was to be computed without reference to such expenses.

17.2 The entire investment for setting up the partnership at Exh.62 i.e. the entire investment for the same was made by his daughter's mother-in-law and no part of the capital or other initial expenses were contributed by the defendant.

17.3 In view of the terms of this partnership it becomes obvious that the 10% of the profits of the firm which go to the share of the defendant is not really a share in the income of the firm, but merely a camouflage for the premium amount to be payable in instalments over a period of years in consideration for the defendant having transferred the tenancy rights to the firm.

18. It was submitted on behalf of the tenant that the partnership is a genuine partnership, and in support of this contention learned counsel for the tenant relied upon the Supreme Court decision in the case of Helper Girdharbhai (supra). There cannot be any doubt as to the principles laid down in this decision. No doubt, the genuineness of a partnership is a mixed question of law and fact. However, the very same decision lays down that the genuineness of a partnership is not a question which can be questioned on facts even in a revision under section 29(2) of the Bombay Rent Act. In the said decision the Supreme Court found on the facts of that case that the partnership was genuine, but this finding was arrived at on one of the prime facts being established viz. that the tenant had brought with him the tenancy rights as his contribution towards the capital of the firm or his addition to the assets of the firm. On the facts of the instant case, learned counsel for the tenant firstly contends that the defendant-tenant

had not transferred the tenancy rights to the firm (although this contention is opposed to the admission of the defendant in his deposition). Thus, if this contention is accepted and the admission of the defendant on record is ignored, it would further weaken the case of the tenant that it was a genuine partnership. Even otherwise, I am of the view, as laid down by the Supreme Court in the case of Helper Girdharbhai (supra), that even on a reappreciation of the evidence on record the High Court would not be justified in taking a view different from that taken by the lower appellate court, merely because another view on the same set of facts may just be possible.

19. In the premises aforesaid, the finding recorded by the two courts below to the effect that the tenant was liable to be evicted under section 13(1)(e) of the Bombay Rent Act for having unlawfully sublet the suit premises and for having transferred his interest therein to third parties is a finding which is unexceptionable and requires to be confirmed. I, therefore, see no substance in the present revision and the same is accordingly dismissed. Rule is discharged with costs. Interim relief stands vacated.

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